

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 16.10.2015

CORAM :

THE HONOURABLE Mr.JUSTICE R.MAHADEVAN

W.P.No.33051 of 2015

Ananda Siva Samba Sakthi,
W/o.Parthiban,
No.1, Rajiv Gandhi Nagar Extension,
Modern High School Road,
Veli Semandalam Cuddalore-01.Petitioner

Vs.

1. Union of India,
represented by the Chief Secretary,
Excise Department,
Pondicherry.

2. The Commissioner (Excise),
The Government of Pondicherry,
Pondicherry.

3. The Deputy Collector (Excise),
The Government of Pondicherry,
Pondicherry.

4. Kasturi,
W/o.Sambasivam,
No.5, Police Lane,
Mudaliarpet,
Puducherry-605 004.

5. Indhumathi,
W/o.Selvapandian,
No.22, V.O.C.Street,
Puducherry-605 001.

..... Respondents

Petitions filed under Article 226 of the Constitution of India to issue a Writ of Mandamus directing the 2nd respondent to hear and dispose of the appeal submitted by the petitioner on 08.05.2015 within a time limit.

For Petitioner : Mr.T.S.Baskaran
For Respondents : Mrs.N.Mala, AGP(P)

O R D E R

Heard the learned counsel for the petitioner and the learned Additional Government Pleader, who took notice for the official respondents and with their consent, the main writ petitions are taken up for disposal.

2.The case of the petitioner in brief is as follows:-

2-1.The petitioner's grandfather Sundararasu Gramany had owned and possessed several immovable properties in Ariyankuppam and in other places. The petitioner's grandfather had been managing and getting income from the properties and he had purchased other properties with the said income. He had three daughters and 2 sons. The sons were Egambaram @ Durai (petitioner's father) and Sambasivam & Sinnaiyan. The petitioner's grandfather died leaving behind his children as legal heirs. The father of the petitioner viz., Egambaram @ Durai had also died leaving behind him his wife Kamala, the petitioner and his sister Ananda Sundara Lakshmi as his legal heirs. After the death of the petitioner's father Ekambaram, the petitioner's paternal uncle Sambasivam was in management of the joint family properties. From and out of the income from joint family property, the petitioner's uncle Sambasivam purchased immovable properties and he had also started liquor business in the name of S.S.Bar and had obtained license for the same. The said S.S.Bar was started from and out of the income from the joint family properties and also from the sale proceeds of the joint family properties. Thus, the said S.S.Bar run by the petitioner's uncle Sambasiavam is also a joint family asset and they are also entitled to a share in the profits of the business. While so, the petitioner's uncle Sambasivam died issueless leaving behind his wife, the 4th respondent herein, as his legal heir.

2-2.After the death of the petitioner's uncle Sambasivam, disputes arose between the petitioner and other legal heirs with the 4th respondent herein with regard to the division of the properties and the business. Hence, the petitioner along with the other sharers had filed a suit in O.S.No.243 of 1999 on the file of Additional Sub-Court, Pondicherry seeking the relief of partition and for rendition of accounts. In the said suit, the petitioner has specifically sought for appointment of a receiver for running the business and for rendition of accounts in respect of the said S.S.Bar and the said suit is still pending. Pending the suit, the 4th respondent herein had applied for name transfer of license for the said S.S.Bar. The petitioner had objected for the name transfer, however, the licence was issued in favour of the 4th respondent on the condition that the transfer of license is subject to the result of the suit in O.S.No.243 of 1999. Later,

the 4th respondent, in violation of the license condition and also order for transfer of licence, had entered into a partnership agreement with the 5th respondent and handed over the business to the 5th respondent. Now, the 5th respondent is carrying on the business of the said S.S.Bar with the license issued in the name of the 4th respondent. Subsequently, the 4th respondent in violation of the license condition, had submitted application for renewal of license with the respondents 2 and 3 by including the name of the 5th respondent and sought licence for running the said S.S.Bar. The said application was rightly rejected by the authorities. These information came to the knowledge of the petitioner by the information provided under the RTI Act. Now, the 5th respondent is carrying on the business of the said S.S.Bar as a partnership firm and had obtained registration for sales tax and other taxes in the partnership name. Though the licence was issued to the 4th respondent, subject to result of the suit, in clear violation of the same the 5th respondent is running the business of the said S.S.Bar and had obtained registration for sales tax and other taxes in the name of the partnership business. Now, according to the petitioner, the respondents 4 & 5, in clear violation of the terms and conditions of the licence and also in violation of the Puducherry Excise Act, have approached the respondents 2 & 3 for shifting of business of the said S.S.Bar from the existing place of business to another area. The petitioner has objected before the authorities in considering the application for transfer of place of business, as the business of the said S.S.Bar is a family concern and the 4th respondent has no individual right over the business.

2-3. In this regard, the petitioner has issued a legal notice dated 16.12.2013 to suspend the licence given to the said S.S.Bar immediately when the 4th respondent had violated the conditions. The petitioner has also submitted a petition dated 02.09.2014 to the 3rd respondent to suspend the F1-II license of the S.S.Bar and also not to grant any transfer of the place of business of the said S.S.Bar to any other place from the present place of business. The 3rd respondent, having acknowledged the said petition dated 02.09.2014 on 04.09.2014, had not initiated any action nor enquiry against the 4th respondent till date. Hence, the petitioner has preferred an appeal before the 2nd respondent on 08.05.2015; but, the 2nd respondent has not considered the petitioner's appeal dated 08.05.2015 and disposing of the same. Hence, the present writ petition is filed seeking direction for disposal of the appeal within the time frame.

3. Considering the facts and circumstances of the case, in view of the limited prayer sought for by the petitioner, without going into the merits and demerits of the claim of the petitioner, this Court directs the 2nd respondent to consider the

appeal, dated 08.05.2015, filed by the petitioner and dispose of the same in accordance with law, after affording an opportunity to the petitioner as well as to the respondents, within a period of four weeks from the date of receipt of a copy of this order.

With the above direction, the writ petitions are disposed of. No costs.

ssv

s/d-
Assistant Registrar(J)

True Copy

Sub-Assistant Registrar

To

1. The Chief Secretary,
Union of India,
Excise Department,
Pondicherry.
2. The Commissioner (Excise),
The Government of Pondicherry,
Pondicherry.
3. The Deputy Collector (Excise),
The Government of Pondicherry,
Pondicherry.

+ 1 cc to Govt.Pleader, Puducherry SR 57794

+ 1 cc to Mr.T.S.Baskaran, Advocate SR 57600

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